THE HON'BLE SRI JUSTICE E. DHARMA RAO

W.P.No. 18626 of 2005

This writ petition is filed seeking a declaration that the action of the 2nd respondent in not disposing of the appeal of the petitioners is illegal and arbitrary and for a consequential direction to dispose of the appeal filed by the petitioners expeditiously.

The case of the petitioners is that they are the absolute owners and possessors of double storied building admeasuring 341-60 sq. yards in Sy.No. 57/2 of Kantabasti, Trimulgherry, Hasmathpet Road, Secunderabad having been purchased under two separate registered sale deeds dated 12-8-1996. The petitioners complain that the Mandal Revenue Officer, Trimulgherry, Mandal, 1st respondent herein, alleging that their house property is situated in Sy.No.57/2 and thereby encroached upon the government land, issued a notice U/s 7 of the A.P.Land Encroachment Act (for short the "Act"), calling upon the petitioners as to why they shall not be evicted from the premises. The petitioners submit that though in a suit in O.S.No. 1675/81 it was declared that the property in Sy.No.57 is a private land of the vendors of the petitioners and thereafter the petitioners are the absolute owners of the house property with effect from 12-8-1996, which was confirmed in A.S.No. 16/83 and in S.A.No.267/85, the initiation of land encroachment proceedings against the house property of the petitioners is illegal and arbitrary. The 1st respondent proceeded against the house property of the petitioners and recorded a finding that the present encroacher is not a party to the proceedings and the land in Sy.No.57/2 admeasuring 22 guntas is surrounded by government land in Sy.No.57/1 and the encroachers are trying to claim the land under the shelter of the sale deeds and the encroachment physically exists of Sy.No.57/1 and not fall under Sy.No.57/2. Basing on the said finding, it is stated, 1st respondent issued notice U/s 6 of

the Act for eviction of the petitioners from the land and the building thereon. Challenging the said notice the petitioners filed W.P.No.9682/2003 and this court on 18-7-2003 disposed of the same giving liberty to the petitioners to avail the remedy by way of appeal and further that if the petitioners prefer the appeal within four weeks from the date of the order, the same shall be treated as having been preferred within the period of limitation by the appellate authority and shall be dealt with on merits. It was also observed that if the petitioners prefer the appeals within the period of four weeks the respondents shall not induct third parties or alter the nature of the properties pending disposal of the appeal. The petitioners also submit that in the suit referred to supra a finding was given to the effect that there is no government poramboku land in Sy.No.57 and the sub division of Sy.No.57 is not supported by any record and that the entire Sy.No.57 is a private patta land. It is brought to my notice that the appeal dated 4-8-2003 filed by the petitioner is still pending before the 2nd respondent and though submitted written arguments along with oral submissions the said appeal is not disposed of so far.

The learned counsel for the petitioners contends that the summary remedy of eviction under the Act is not permissible where a person is in long standing possession and when there is a two storied building exist over the land in question for more than 25 years and enjoying the same by the petitioners from the date of purchase and that therefore the action of the respondents is without jurisdiction and contrary to the provisions of law.

The point involved in this writ petition has a checkered career and the same cannot be decided since the appeal filed by the petitioners is pending consideration before the 2nd respondent. Therefore, having regard to the facts and circumstances of the case and without going into merits, it would be suffice if a direction is given to the 2nd respondent to consider and dispose of the appeal dated 4-8-2003 preferred by the petitioners in accordance with law and after giving an opportunity of being herd the petitioners within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No order as to costs.

23rd August, 2005

BJ/